

the cited references, singularly or in combination, teaches or suggests at least this feature of the claimed invention. Contrary to the Examiner's allegations, Gerald et al. discloses on pages 1-2, an article discussing websites where you could browse, order catalogs and find gardening tips ranging from dealing with gardening pests to growing better tomatoes.

The Examiner states "[a]s disclosed in Gerald, Burpee and National Gardening Association have websites to interact with users, all above mentioned limitations are inherent in Gerald." (Office Action at 3.) Accordingly, it appears that the Examiner tries to cure the deficiencies of Gerald et al. by relying on inherency. Applicants respectfully direct the Examiner to the MPEP § 2112 disclosing "in relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." Contrary to these teachings, the Examiner has provided no basis in fact or technical reasoning that supports the determination that "presenting a user with at least one inquiry; identifying at least one gardening material based upon a response to the inquiry" as recited in claim 1 is an inherent limitation of Gerald et al. Accordingly, Applicants respectfully submit that Claim 1, and Claims 2-12, which depend from Claim 1, are allowable over the cited references.

Claim 13 is allowable over the cited reference in that Claim 13 recites a combination of element including, for example, "a processor connected to the storage device and the user input/output device, the processor being configured to perform the steps of presenting a user with at least one inquiry for the user input/output device; identifying at least one gardening material based upon a response to said inquiry." None of the cited references singularly or in combination, teaches or suggests at least this feature of the claimed invention.

The Examiner states:

"Gerald teaches a method and system for identifying material comprising inputting the inquiry on a computer having a

storage device for storing database of gardening material, a user input/output device including an internet browser, a processor connected to storage device and user input/output device to execute the steps of presenting a user with at least one inquiry via input device and identifying at least one gardening material based upon the inquiry, and offering the user the opportunity to purchase at least one gardening material (See Pages marked 1 and 2. As disclosed in Gerald, Burpee and National Gardening Association of web sites to interact with users, all above limitations are inherent in Gerald).” (Office Action at 3.)

As discussed above, it appears that the Examiner has relied on inherency for the combination of elements in claim 13. However, the Examiner has not set forth a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flows from the teaching of Gerald et al. Contrary to the Examiner’s allegations, Gerald et al. does not teach or suggest presenting a user with at least one inquiry via the user input/output device; identifying at least one gardening material based upon a response to said inquiry, as recited in Claim 13. Accordingly, Applicants respectfully submit that Claim 13 and Claims 14-25, which depend from Claim 13, are allowable over the cited references.

Claims 3 and 16 depend from claims 1 and 13, respectively. As discussed above, Gerald et al. is deficient in the limitations with regard to claims 1 and 13 as the Examiner has not established a *prima facie* case of anticipation. In addition the Examiner purports to rely on official notice by stating, “Official Notice is taken of both the notoriously well known concept and benefits of displaying a label associated with the gardening material to the user in Gerald.” (Office Action at 5.)

The Examiner may take official notice of facts outside the record, which are capable of instant and unquestionable demonstration as being “well-known” in the art. As set forth in MPEP § 2144.03, if an applicant traverses an assertion made by an examiner while taking Official Notice, the examiner should cite a reference in support of their assertion.

Applicants hereby traverse all use of Official Notice taken in the present application and respectfully request that the Examiner provide a reference supporting the allegedly notoriously well-known concept and benefits of displaying a label associated with the gardening material to the user in Gerald et al.

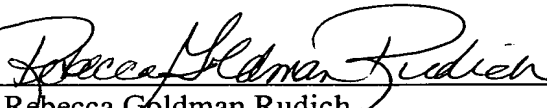
Claims 4-7 and 17-20 are allowable as the Examiner relies on Sturgeon to cure the deficiencies of Gerald et al. As discussed above, none of the references teach or suggest all the limitations in claims 1 and 13. Therefore, claims 4-7 and 17-20 are allowable by virtue of their dependencies.

If the Examiner deems that a telephone call would further the prosecution of this application, the Examiner is invited to call the undersigned at (202) 496-7500. All correspondence should continue to be sent to the below-listed address.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. § 1.136, and any additional fees required under 37 C.F.R. § 1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to deposit Account No. 50-0911.

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Respectfully submitted,

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